

Exhibit A

Nieto, II, Felix

April 11, 2014

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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

-----X
FELIX NIETO, :
Plaintiff, : Case No. 1:13-cv-03495-CCB
v. :
ALLIED INTERSTATE, INC., :
Defendants. :
-----X

Deposition of FELIX NIETO, II, a
witness herein, at the law offices of Reed,
Smith, LLP, 1301 13th Street, N.W., 11th Floor,
Washington, D.C., commencing at 9:40 a.m. on
Friday, April 11, 2014, and the proceedings being
taken down by stenotype and transcribed by
Catherine B. Crump, a Notary Public in and for
the District of Columbia.

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1 complaint starting on June 26th. So there are four
2 anonymous calls coming into my mobile device starting
3 in June, June 22nd, on the particular documentation
4 that was provided to you, but the ones that were
5 identified by Caller ID that identifies your client
6 as originator started on June 26th.

7 Q. The four calls you mentioned that you
8 identified as from an anonymous caller --

9 A. Yes.

10 Q. Is that correct?

11 A. I'm looking at them.

12 Q. You have no way of knowing who initiated
13 those phone calls, do you?

14 A. That's correct.

15 Q. And you don't contend that it was the
16 defendant in this case, do you?

17 A. I have no way of knowing.

18 Q. With respect to the calls that do have
19 an incoming telephone number, those are the ones that
20 you contend are the subject of this complaint?

21 A. That's correct.

22 Q. If I understand your testimony

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1 correctly, you indicated that those calls began on
2 June 26, 2013; is that correct?

3 **A. Those are the calls that were made to**
4 **that mobile device.**

5 Q. Do you contend that there were other
6 calls that are subject to this lawsuit?

7 **A. They were not subject to -- they were**
8 **not included. These are the ones that were included.**
9 **The lawsuit specifically referenced the calls off**
10 **this call log.**

11 Q. And to clarify, you testified that
12 according to your call log, the calls began on June
13 26, 2013?

14 **A. Correct.**

15 Q. And your complaint had indicated a date
16 of November 19, 2013. Are all the calls on your call
17 log that you're looking at now contained within that
18 window between June 26th and November 19, 2013?

19 **A. All of the calls referencing your client**
20 **are contained within that timeframe. There are four**
21 **anonymous calls that start back at June 26, but for**
22 **your client's purposes, that was June 26th.**

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1 Q. Your complaint alleges that there were
2 30 calls during that time period from June-July 2013
3 through November 2013; is that correct?

4 Sir, I'm just asking. You don't need to count
5 them. Your complaint alleges 30 calls; is that
6 correct?

7 A. **Right. There are actually 32.**

8 Q. Your complaint alleges 30 calls; is that
9 correct?

10 A. **There are 32 on the call logs.**

11 Q. Your complaint alleges 30 calls; is that
12 correct?

13 A. **Yes. I think at that point, more came**
14 **in. So there's actually, technically, 32, but yes.**
15 **I believe that's correct, that 30 was in there or it**
16 **could have been a typo. I don't remember.**

17 Q. You have not amended your complaint
18 since its initial filing; is that correct?

19 A. **That's correct. Consider that a freebie**
20 **for your client.**

21 Q. You've been looking at information on
22 your computer screen to answer the last couple of

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1 initial complaint. So you're asking me to produce
2 something that you already have. That seems to be an
3 extra burden on me to produce something that you
4 already have in your possession. This is not new
5 information.

6 Q. What was your basis in your discovery
7 responses for not producing those documents?

8 A. That you already have the documents.
9 Why should I reproduce or produce again something
10 that you should already have? That's extra work on
11 my behalf for something that doesn't need to happen.
12 To me, that's common sense, but maybe because I'm not
13 a lawyer, I don't understand those things.

14 Q. With respect to the calls that we've
15 been discussing that are listed in Exhibit A to the
16 complaint --

17 A. Okay.

18 Q. -- those are the only calls that are the
19 subject of this lawsuit; is that correct?

20 A. Correct.

21 Q. What telephone number do you contend
22 those calls were made to?

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1 **A. ██████████-2049.**

2 Q. So to understand your testimony, all of
3 the calls that are at issue in this complaint and in
4 this action, you contend were made to the number
5 ██████████-2049; is that correct?

6 **A. Correct.**

7 Q. What is that -- if I refer to that as
8 the 2049 number, will you understand what I'm talking
9 about for shorthand so I don't have to read through
10 ten digits?

11 **A. Sure. Yes.**

12 Q. With respect to the 2049 number, is that
13 associated with a land line, a cell phone, or some
14 other kind of service?

15 **A. It is comparable to a cellular or mobile**
16 **radio device. That basis comes from my experience as**
17 **a subject matter expert in telecommunications,**
18 **digital voice communication systems, and a variety of**
19 **other areas.**

20 Q. Sir, could you please explain what you
21 mean by comparable?

22 **A. So the TCPA lists four or five different**

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1 radio-type of devices, radio frequency-type of
2 devices, that are illegal to make a communication
3 with. They mentioned different technology bases.

4 So this device falls within those technology
5 bases. It's comparable to what people, lay people,
6 understand as cellular devices, mobile radio, mobile
7 paging systems, those kind of things.

8 Q. Sir, as a subject matter expert, do you
9 contend that the device that 2049 is associated with
10 is a cellular device?

11 A. So if you -- as a subject matter expert,
12 and I'll give you my background so that we can
13 establish why I can make these particular -- okay. I
14 have 30 years in telecommunications.

15 Q. Sir, I'll have questions that will deal
16 with your background. I want to ask you and clarify,
17 the number 2049 that we've been discussing here
18 today, you contend that that is not associated with a
19 cellular device; is that correct?

20 A. It is comparable in technical design to
21 what you consider cellular devices.

22 Q. What is it?

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1 A. It's a mobile radio device comparable to
2 cellular, which means it's wireless. It's has the
3 ability to move. It has the ability to lock into
4 different signals, different locations, and it has
5 the ability to process digital voice information by
6 cellular. It has the ability to process, actually,
7 data streams just like cellular systems, the same
8 way.

9 It follows a protocol called Voiceover IP,
10 which is a digital format which transmits a data
11 package that's been digitally converted from an
12 analog capability to a digital. All the technical
13 systems practically in the market today employ the
14 same technology.

15 The issue of what different people define as
16 cellular or non-cellular is typically words that they
17 understand from what they've heard without being a
18 technology or a technical expert; but in terms of the
19 underlying technical premise of which the data
20 package, the voice package, the digital package
21 transfer, they work in the same way.

22 Q. So your testimony here today is that the

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1 cell phone number [REDACTED]-2049 was not associated
2 with a cellular device; is that correct?

3 A. Say that again.

4 Q. I'm asking you to please confirm that
5 the number [REDACTED]-2049 is not associated with a
6 cellular device; is that correct?

7 A. I do not know your source of data, but
8 it is comparable to a cellular device.

9 Q. Sir, based on -- you've drawn a
10 distinction here between what you understand to be a
11 cellular device and what you understand to be
12 Voiceover IP; is that correct?

13 A. That's not correct. What I'm
14 distinguishing is between a land line and a mobile
15 device. Cellular, mobile, they all follow the same
16 premise. Voiceover IP is just a protocol format that
17 cellular phones use to transmit data.

18 So Voiceover IP stands for Voiceover Protocol.
19 Its digital package can be converted from analog to
20 digital and then used in some kind of media to
21 transfer the data. That media in which the data is
22 transferred can be cellular or it doesn't matter.

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1 In the case of this particular device, it was
2 transmitted through a cellular system also that you
3 would classify both as an internet medium or in terms
4 of a radio device.

5 Q. Sir, is your testimony here that the
6 number (240) 512-2049 is associated with a cellular
7 device?

8 A. Let me explain. It is not a land line.

9 Q. Sir, that's not question. My question
10 whether it is a cellular device.

11 A. It can be associated like a cellular
12 device, that's correct.

13 Q. If understand your testimony, sir, you
14 are testifying that the number [REDACTED]-2049 is not
15 associated with a cellular device; is that correct?

16 A. Okay. Let me repeat.

17 Q. It's a yes or no question, sir.

18 A. Because the question is not a clear
19 question. Okay. So if you ask a question that's not
20 a clear question, then the response is skewed towards
21 a wrong answer that is not the correct answer. If
22 you want the truth, if you want the actual

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1 correlation between what you are deeming to be a
2 cellular device or a radio frequency device or
3 cellular whatever compared to a land line, which is
4 where you started this questioning, there is a
5 distinction between a land line and a non-land line
6 device.

7 Q. Sir, so you understand that there is a
8 distinction between a land line and a non-land line
9 device; that's correct? You understand there is a
10 distinction; is that correct?

11 A. There is a distinction, correct.

12 Q. And you've also drawn a distinction here
13 today between a cellular device and other radio
14 devices; is that correct?

15 A. I didn't draw a distinction. I said
16 they were comparable or similar to.

17 Q. Comparable or similar to does not mean
18 the same thing as same; is that correct?

19 A. Well, from the technology point of view,
20 it can mean the same.

21 Q. Sir, I'm asking you with respect to the
22 number 2049, the number we're talking about today, is

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1 through these three or four carriers, basically, and
2 so other companies contract out. They contract a
3 billion minutes worth of air time on their system and
4 re-brand it and call it their own. Virgin Mobile is
5 an example of one, Boost, those. They do not have
6 their own digital infrastructure.

7 Q. So if I understand your testimony, ACN
8 contracts with Sprint to use Sprint's network.

9 A. Correct.

10 Q. And who is your contract with?

11 A. For which device? The 2049 device?

12 Q. The 2049 device.

13 A. ACN.

14 Q. What is that contract for?

15 A. Digital phone service.

16 Q. I'm sorry?

17 A. Digital phone service. I mean, I don't
18 know. It's the same kind of thing that Sprint is for
19 my phone here, for digital phone service.

20 Q. With respect to the 2049 number, did you
21 have that number prior to getting the device we've
22 been talking about? Did that 2049 number exist on a

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1 telephone dialing system.

2 So that piece there is just in response to --
3 that's the law, period. So I wrote notes just to
4 remind me to make sure that those issues were brought
5 up when they come up, just like now. You brought
6 them up first.

7 Q. Sir, is it your allegation that the
8 defendant in this case used an automatic telephone
9 dialing system to dial your number?

10 A. Yes.

11 Q. Your complaint also made reference to
12 artificial or prerecorded voice. Is it your
13 contention today that the defendant called you using
14 an artificial or prerecorded voice?

15 A. Yes.

16 Q. What is the basis for that belief?

17 A. So what isn't shown here was they called
18 my other -- this mobile device and started with this,
19 you know, delayed system that kind of signifies an
20 automatic dialer that came with a recorded voice -- a
21 voice recorded mode. Then someone answered when they
22 realized -- when they call, they call. They go

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1 through this delay. Then the voice system kicks in.
2 If you say nothing, then it says you're acknowledging
3 that you are in receipt of this thing and you accept
4 that you are so and so. Then someone kicks in on the
5 line afterward.

6 That whole process happened on the 0799, and
7 then immediately, within a day or so, they flipped to
8 this number.

9 Q. Sir, if I understand correctly, when you
10 were answering that last question, you picked up and
11 held up the device you have here with you today.

12 A. Correct.

13 Q. That is not the 2049 number. Correct?

14 A. Correct.

15 Q. So the device you held up today is not
16 the device that's at issue in the litigation; is that
17 correct?

18 A. But you brought it up in a previous
19 question, 0799, this number.

20 Q. Sir, I'm asking with respect to the 2049
21 number.

22 A. Okay.

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1 Q. And the calls on the 2049 number that
2 you contend are the subject of this litigation.

3 A. Okay.

4 Q. I asked you for the basis for your
5 belief and your allegation that there was an
6 artificial or prerecorded voice used on those
7 telephone calls. What is the basis for your belief
8 that on the 2049 number, somebody called you using --

9 A. On the premise that that is how
10 automatic dialing systems work.

11 Q. What is the basis for your belief?

12 A. Experience in technology and hearing
13 these systems in the past.

14 Q. With respect to -- strike that.

15 A. Can I ask a question that's not on the
16 record? Or I can ask it on the record.

17 Q. Please go ahead and ask it on the
18 record.

19 A. Okay. So if I have questions that I
20 want to ask during the next round, I can write them
21 here, but you're going to get them anyway. So you're
22 going to know the question I'm going to ask, and

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1 Q. Sir, in response to Question No. 3,
2 please read your response or the notes that you have
3 next to No. 3.

4 A. Communicator is just the call log
5 communication. Is that it?

6 Q. Is that what it says next to No. 3?

7 A. Yeah. Communication is just a call log.

8 Q. What do you mean by that?

9 A. That the only communication that I have
10 had with Interstate has been this. So I did not -- I
11 still don't even know what their basis of their call
12 was to do this other than finding out that they were
13 a collection agency.

14 So they called me. They haven't defined what
15 they were calling for, what it's in regards to,
16 didn't even say the nature of the business other than
17 they were calling me and making all these calls to my
18 number.

19 Q. What did they say?

20 A. Pardon me?

21 Q. What did they say when you were on the
22 phone with them?

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1 **A. The conversation was they represent**
2 **Interstate so and so, and the first thing I told them**
3 **was I do not want you to call me anymore. That was**
4 **in the initial number to this particular device, not**
5 **in the suit, but it happened on this device. Then**
6 **after I told them not to call and talk to me anymore,**
7 **they started calling my other device.**

8 Q. So the record is clear, sir, you've been
9 holding up the cellular device you have with you
10 today, which is the 0799 number; is that correct?

11 **A. I'm holding the mobile device with 0799.**
12 **That's correct.**

13 Q. And we clarified previously that that
14 0799 is different than the cellular device -- not the
15 cellular device, the device that you contend has a
16 2049 number; is that correct?

17 **A. Correct. They are different physical**
18 **devices.**

19 Q. So the call you say that you had with
20 Allied Interstate where you told them not to call you
21 anymore, your testimony here is that occurred on the
22 0799 number?

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1 A. Correct.

2 Q. And that did not occur on the 2049
3 number?

4 A. Correct.

5 Q. When did that conversation occur on the
6 0799 number?

7 A. Off my memory, without looking at all
8 the documentation, it was, I believe, in June of last
9 year, but that's as close as I can get without going
10 through and pulling out some fact.

11 So you have to remember that when you go on
12 memory, it's a little hard to get the exact stuff
13 that you write down on some previous thing. So I'm
14 just going by an proximate time.

15 Q. Well, putting aside your memory, where
16 would you go to look up that information if you were
17 to look it up?

18 A. Well, it is possible I could go to the
19 cell phone company and have them pull a detailed log
20 of all the calls that came into the device. That
21 would probably be my guess as to where you'd get it,
22 because these phones don't hold that kind of data on

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1 log, which means after it gets to a certain part, it
2 just overwrites. So now it has a bigger memory card,
3 but I don't think that's in there and it represents
4 too much of an effort to go in and try to find if
5 that number is in there because it's not simple to
6 find. I don't know what kind of phone you have, but
7 this is kind of an older phone now.

8 Q. Is it your testimony that it would be
9 difficult to find that information in your phone or
10 that information does not exist in the phone?

11 A. To the best of my knowledge, I believe
12 it does not exist on the phone.

13 Q. And you've checked?

14 A. I have checked, but I haven't done what
15 we call forensic exhaustive tests.

16 Q. With respect to the call from Allied
17 Interstate to the 0799 number, that's the only time
18 that you asked Allied Interstate to stop calling you;
19 is that correct?

20 A. That's correct.

21 Q. If you could turn back to page 4 of
22 Exhibit No. 2.

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1 where I did not disclose to them that I was involved
2 in a lawsuit and then, of course, then they were,
3 Well, why are you doing that? But it was sporadic
4 and I said nothing.

5 Q. I'm sorry. I don't think I understood
6 your response.

7 A. They opened my mail.

8 Q. Who is they?

9 A. I want to believe it was my ex -- well,
10 my still current wife.

11 Q. Someone with access to the mailbox?

12 A. Correct.

13 Q. Opened your mail before you got it?

14 A. Correct.

15 Q. And what happened as a result?

16 A. Well, she just wrote on there, Oh, I
17 thought this was Felix No. 3, sorry about that, and
18 then she asked me about -- she just said, What is
19 this? I said nothing. That was it.

20 Q. Is Felix No. 3 your son?

21 A. Yes.

22 Q. Felix No. 1 would be your father?

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1 A. That's correct, but I did not have
2 discussions with them in any capacity to a technical
3 content. It was just they, obviously, read the
4 correspondence and they said what's this and I said
5 it's nothing.

6 Q. Did you have a problem with bills not
7 arriving that you expected to arrive?

8 A. I don't know because it was hard to
9 tell. In other words, a lot of times, I will get
10 multiple bills from the same -- you know, sometimes
11 you get bills repeated, and in the official phases
12 when was in the transition, sometimes I was late
13 because I didn't get a bill. I couldn't tell if they
14 delayed it and didn't give me the first one. It was
15 hard to tell.

16 So the initial moving into 7619 was to kind of
17 establish a differential in between my son with the
18 same as myself. Sometimes the bills were to just
19 Felix Nieto and not the second, third, whatever.

20 Q. Sir, what bills were at issue that you
21 were receiving at this point in time? You indicated
22 you were having trouble receiving bills in the mail.

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1 What bills would you have been receiving at that
2 point in time? Would there have been utility bills?

3 A. No. Just credit card bills, whatever.

4 Q. Credit card bills and what else?

5 A. Mortgage payments for some of my
6 property or whatever.

7 Q. You say mortgage payments for some of
8 your properties?

9 A. Correct. I object to getting personal
10 about something that has nothing to do with this
11 case, just for the record.

12 Q. Sir, with respect to the mortgage
13 payments for some of your properties, what properties
14 are you talking about?

15 A. I object on the ground that it has
16 nothing to do with the TCPA lawsuit, nothing
17 whatsoever.

18 Q. Your objection is noted. Sir, may I ask
19 you --

20 A. I have houses in Florida.

21 Q. How many houses do you have in Florida?

22 A. Three.

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